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Attorneys for Plaintiff White Cap Construction Supply, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

White Cap Construction Supply, Inc.,  
Plaintiff,  
v.  
The Domain Name *oceanographical.com*  
in rem, TierraNet, Inc., Domain Name  
Registrar  
Defendant.

Case No. 07cv2064 WQH (CAB)

Declaration of Michael Harris in Support of  
Motion to Enter Default Judgment by the  
Court

Date: Monday, August 4, 2008

Time: 11:00 a.m.

No Oral Argument Unless Requested by the  
Court

I, Michael Harris, declare as follows:

1. I am a member of the State Bar of California and admitted to the bar of this court pro hac vice. I represent plaintiff White Cap Construction Supply, Inc.
2. When this declaration identifies an exhibit, a true and correct copy of the exhibit is attached to this declaration.
3. Exhibit B is a copy of the printout from the United States Patent and Trademark Office (PTO) website for White Cap's Trademark Registration No. 1,478,065.
4. Exhibit C is a copy of the printout from the PTO website for White Cap's Trademark Registration No. 3,026,843.
5. Exhibit D is a copy of the printout from the PTO website for White Cap's Trademark Registration No. 3,048,812.

1       6. I have accessed the www.whitecap.com in the past. The displayed web page  
2 would show *oceanographical.com* in the address box of my Firefox Internet browser. The  
3 display showed an ocean map from a United States Navy web site. Accessing the  
4 www.whitecap.com web site now yields different results. *Oceanographical.com* still  
5 shows in the address box of my Internet browser, but the browser now reports a potential  
6 computer safety issue at that web address. Exhibit E is the printout from my web browser.  
7 Internet Explorer web browser's report of computer safety issues differs slightly.

8       7. Exhibit F is a copy of the judgment in *Simpson Strong-Tie Company Inc. v. Es-*  
9 *rey* from the United States District Court for the Northern District of California. I obtained  
10 a copy of the judgment from Pacer.

11       8. According to a search I conducted on the "Whois" database, *whitecap.com* is  
12 registered to *oceanographical.com*, which allegedly is located at 3453 Ingraham St., Suite  
13 B, San Diego, CA 92109. I conducted another search on the Google Maps website for that  
14 address. According to Google Maps, First Class Mailboxes & Services is located at that  
15 address. Exhibit G is the copy of the Google Maps web page.

16       9. The "Whois" database also says that the domain name registrar for *oceanogra-*  
17 *phical.com* is AW Registry, Inc. However, a representative of AW Registry, Inc. provided  
18 me with an agreement, Exhibit H, selling all web -hosting accounts for AW Registry, Inc.  
19 to TierraNet. Thus, TierraNet is the registrar for *whitecap.com*.

20       I declare under penalty of perjury under the laws of the United States that the fore-  
21 going is true and correct.

22  
23 Executed June 20, 2008

  
Michael D. Harris

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2008, I electronically filed the foregoing document using the Case Management/Electronic Case Filing (“CM/ECF”) system, which will send a Notice of Electronic Filing of “Declaration of Michael Harris in Support of Motion to Enter Default Judgment by the Court” to the following CM/ECF participant:

J. Daniel Holsenback and Christopher C. Taylor  
Holsenback Taylor  
625 Broadway, Suite 906  
San Diego, CA 92101

June 20, 2008

/s/ Michael D. Harris  
Michael D. Harris



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*(Use the "Back" button of the Internet Browser to return to TESS.)*



<b>Word Mark</b>	WHITE CAP
<b>Goods and Services</b>	IC 042. US 101. G & S: RETAIL STORE AND DISTRIBUTORSHIP SERVICES IN THE FIELD OF CONSTRUCTION TOOLS, EQUIPMENT AND MATERIALS. FIRST USE: 19830510. FIRST USE IN COMMERCE: 19840525
<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Design Search Code</b>	
<b>Serial Number</b>	73611720
<b>Filing Date</b>	July 28, 1986
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	December 1, 1987
<b>Registration Number</b>	<b>1478065</b>
<b>Registration Date</b>	February 23, 1988
<b>Owner</b>	(REGISTRANT) WHITE CAP INDUSTRIES, INC. CORPORATION CALIFORNIA 1934 EAST EDINGER SANTA ANA CALIFORNIA 92705 (LAST LISTED OWNER) WHITE CAP CONSTRUCTION SUPPLY, INC. CORPORATION CALIFORNIA 3120 AIRWAY AVE. COSTA MESA CALIFORNIA 92626
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	SAMUEL B. STONE
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).
<b>Live/Dead Indicator</b>	LIVE



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## WHITE CAP

<b>Word Mark</b>	WHITE CAP
<b>Goods and Services</b>	IC 019, US 001 012 033 050, G & S: non-metallic building materials, namely, soffits, sewer and drain pipe of ceramic or earthenware or concrete or sandstone; deck drains of concrete or ceramic; bituminous waterproofing sheets; non-metal storm water pollution prevention products used as construction materials, namely storm water channels, erosion control jute mesh mats, silt fencing, drain filters, sand bags; non-metal concrete forming products, namely, panels, grout bags, rock texture mats, non-chemical concrete bond breakers, expansion board, curb and gutter felt, rebar caps, column forms, and form board. FIRST USE: 20040201. FIRST USE IN COMMERCE: 20040201
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78391771
<b>Filing Date</b>	March 26, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	November 1, 2005
<b>Registration Number</b>	3048812
<b>Registration Date</b>	January 24, 2006
<b>Owner</b>	(REGISTRANT) White Cap Construction Supply, Inc. CORPORATION DELAWARE 3120 Airway Ave Costa Mesa CALIFORNIA 92626
<b>Attorney of Record</b>	Steven C Sereboff
<b>Prior Registrations</b>	1478065;2619417
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**Record 1 out of 1**

[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) *(Use the "Back" button of the Internet Browser to return to TESS)*

**White Cap**

<b>Word Mark</b>	WHITE CAP
<b>Goods and Services</b>	IC 019. US 001 012 033 050. G & S: non-metal building materials, namely, soffits, sewer and drain pipe of ceramic or earthenware or concrete or sandstone; deck drains of concrete or ceramic; bituminous waterproofing sheets; non-metal storm water pollution prevention products used as construction materials, namely storm water channels, erosion control jute mesh mats, silt fencing, drain filters, drainage absorption products, sand bags; non-metal concrete forming products, namely, panels, grout bags, rock texture mats, non-chemical concrete bond breakers, expansion board, curb and gutter felt, rebar caps, column forms, and form board. FIRST USE: 20040201. FIRST USE IN COMMERCE: 20040201
<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Design Search Code</b>	
<b>Serial Number</b>	78391786
<b>Filing Date</b>	March 26, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 20, 2005
<b>Registration Number</b>	3026834
<b>Registration Date</b>	December 13, 2005
<b>Owner</b>	(REGISTRANT) White Cap Construction Supply, Inc. CORPORATION DELAWARE 3120 Airway Ave Costa Mesa CALIFORNIA 92626
<b>Attorney of Record</b>	Steven C Sereboff
<b>Prior Registrations</b>	1478065,2619417
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

**Secure Connection Failed**

www.fnmoc.navy.mil uses an invalid security certificate.

The certificate is not trusted because the issuer certificate is unknown.

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- If you have connected to this server successfully in the past, the error may be temporary, and you can try again later.

[Or you can add an exception...](#)

**Exhibit E**

1  
2  
3 IN THE UNITED STATES DISTRICT COURT  
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6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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9 SIMPSON STRONG-TIE COMPANY, INC., a  
10 California corporation,  
11 Plaintiff,  
12 v.  
13

No. C 04-04608 CW

**JUDGMENT**

14 TODD ERSEY, an individual dba  
15 ESREY.COM,  
16 Defendant.  
17

18 For the reasons set forth in Magistrate Judge Bernard  
19 Zimmerman's Report and Recommendation Re: Plaintiff's Motion for  
20 Default Judgment filed August 5, 2005, and adopted by this  
21 Court,  
22

23 IT IS ORDERED AND ADJUDGED  
24

25 That default judgment is entered against Defendant Todd  
26 Esrey, an individual dba esrey.com. Plaintiff Simpson Strong-  
27 Tie Company, Inc., shall recover of Defendant Todd Esrey, an  
28 individual dba esrey.com, the sum of \$29,743.67 (which includes  
\$10,000 in damages, \$16,257.96 in attorneys' fees, and \$3,485.71  
in costs), with interest thereon as provided by 28 U.S.C. §  
1961. The Defendant, his agents, and all persons acting for,  
with, by, or through him, are enjoined as follows:

1. To refrain from using Plaintiff's marks, or any  
derivation or combination of words thereof, for any

1 reason, including in domain names and on the Internet.

2 2. Pursuant to 15 U.S.C. § 1118, to destroy any  
3 reproduction, counterfeit, copy, or colorable imitation  
4 of the infringing domain names, in whatever format, and  
5 all plates, molds, matrices, and other means of making  
6 the same.

7 Entered at Oakland, California, this 19th day of September,  
8 2005.

9 RICHARD W. WIEKING  
10 CLERK

11 /s/ SHEILAH CAHILL

12 By: \_\_\_\_\_  
13 SHEILAH CAHILL  
Deputy Clerk

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Simpson Strong-Tie Company Inc,

Plaintiff,

v.

Esrey et al,

Defendant.

Case Number: CV04-04608 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/19/05, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Arthur J. Shartsis  
James P. Martin  
Richard F. Munzinger  
Tracy L. Salisbury  
Shartsis Friese LLP  
One Maritime Plaza, 18th Floor  
San Francisco, CA 94111

Mr. Todd Esrey  
595 Brennan Street  
San Jose, CA 95103

Dated: 9/19/05

Richard W. Wiering, Clerk  
By: Sheilah Cahill, Deputy Clerk



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Ingraham St, San Diego, CA  
92109



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